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**THIS DISPOSITION
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Paper No. 12
RFC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sonafi

Serial No. 75/709,369

Robert V. Vickers of Vickers, Daniels & Young for Sonafi.

Kimberly N. Reddick, Trademark Examining Attorney, Law
Office 101 (Jerry Price, Managing Attorney).

Before Simms, Cissel and Drost, Administrative Trademark
Judges.

Opinion by Cissel, Administrative Trademark Judge:

On May 17, 1999, applicant, a French Societe Anonyme, filed the above-identified application to register the mark "COUR ROYALE" on the Principal Register for "cocoa, coffee, chocolate, confectionery and chocolate goods," in Class 29. The application was based on applicant's assertion that it possessed a bona fide intention to use the mark in commerce with these goods.

The Examining Attorney refused registration under Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d),

on the ground that if the mark applicant seeks to register were used in connection with the goods specified in the application, it would so resemble the mark shown below,

which is registered¹, with a disclaimer of the words "COOKIE COMPANY" apart from the mark as a whole, for "bakery goods," that confusion would be likely. Attached to the refusal to register were copies of official U.S. Patent and Trademark Office records of a number of third-party registrations which list the goods therein in terms of various combinations of chocolate, cocoa, and coffee, on the one hand, and bakery goods, on the other. The Examining Attorney contended that these registrations establish that the goods specified in the instant application could be expected to emanate from the same source as the goods specified in the registration cited as a bar to registration of the mark in the instant application.

Applicant responded to the first Office Action by

¹ Reg. No. 1,496,932 was issued on the Principal Register to Karen Reuveni, dba Royal Court Cookie Company, on July 19, 1988. An affidavit under Section 8 of the Act was accepted.

amending the identification-of-goods clause in the application to read as follows: "cocoa, coffee, chocolate, frozen confections, and candy in International Class 30."

Applicant also presented argument on the issue of likelihood of confusion, and attached copies of eleven different third-party registrations. The marks in these registrations include the following: "HOFPFISTEREI," which is translated as "court bakery"; "DEMEL K.K.K. HOFZUCKERBACKER WIEN," wherein "HOFZUCKERBACKER" is translated as "pastry baker for the court"; "CUCINA ROYALE," which was translated as "royal kitchen"; "NUTBERRY ROYALE"; "ROYAL VIKING"; "ROYAL CREST" and design; "Royal Maid" and design; "SALON DE THE BERNARDAUD GALERIE ROYALE" and design; and "ROYAL COURT." The registration for the latter mark lists fresh frozen vegetables and seafood as the goods on which the mark is used. Applicant asserted that these third-party registrations demonstrate the weakness of the words "ROYAL" and "COURT" in connection with food products, and argued that confusion between applicant's mark and the cited registered mark would therefore be unlikely.

Applicant authorized an Examiner's Amendment to the effect that the English translation of "COUR ROYALE" is "COURT ROYAL."

The Examining Attorney was not persuaded to withdraw the refusal to register, and with the second Office Action, she made the refusal final. In further support of the refusal, she attached copies of another group of third-party registrations wherein the listed goods include both bakery products and coffee, tea, frozen confections, cocoa, or candy.

Applicant requested reconsideration of the refusal to register, but the Examining Attorney maintained the final refusal to register. Applicant then filed a timely Notice of Appeal. Both applicant and the Examining Attorney filed appeal briefs, but applicant did not request an oral hearing before the Board.

Based on careful consideration of the record and the arguments presented by applicant and the Examining Attorney, we hold that the refusal to register is well taken.

In the case of *E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), the predecessor to our primary reviewing court set out the factors to be considered in determining whether confusion is likely. Chief among these factors are the similarity of the marks as to appearance, pronunciation, meaning and commercial impression, and the similarity of the goods or services as

set forth in the application and the cited registration, respectively.

In the case at hand, the record establishes that the goods listed in the application are commercially related to those specified in the cited registration, and that the mark applicant seeks to register creates a commercial impression similar to the one engendered by the cited registered mark, so that use of applicant's mark in connection with these related products would be likely to cause confusion.

Turning first to consideration of the marks, we note that in order to ascertain whether a likelihood of confusion would exist, if a mark consists of a term in any foreign language, that term must first be translated into English. In *re Ithaca Industries, Inc.*, 230 USPQ 702 (TTAB 1986). When the mark sought to be registered is the foreign equivalent of the English term which is registered and the goods are related, confusion has been found likely. In *re Perez*, 21 USPQ2d 1075 (TTAB 1991).

Applicant has translated its mark as "COURT ROYAL." Attached to the appeal brief of the Examining Attorney was a dictionary definition, of which the Board may take judicial notice, which translates applicant's mark as "ROYAL COURT." As noted above, the cited registered mark

is "ROYAL COURT COOKIE COMPANY" in a slightly stylized form. We find that applicant's mark creates a commercial impression which is quite similar to that engendered by the registered mark. The slightly stylized presentation of the letters in the registered mark does not alter this conclusion, nor does the fact that the registered mark also includes the descriptive, and hence disclaimed, words "COOKIE COMPANY." This descriptive term has little source-identifying significance. See, e.g., Weiss Associates Inc. v. HRL associates, Inc., 14 USPQ2d 1840 (Fed. Cir. 1990).

Applicant's argument that its mark would not be viewed as the equivalent of "ROYAL COURT" is not well taken. There is no logical or evidentiary basis to adopt applicant's contention that differences with respect to pronunciation, "rhythmic sound," or meaning between the two marks make confusion unlikely. To the contrary, prospective purchasers who are familiar with the registered mark would be likely to assume that related goods offered under applicant's mark emanate from the same source, regardless of whether or not applicant's mark is presented in similar stylized lettering or includes the descriptive or generic term "COOKIE COMPANY."

In a similar sense, the third-party registrations made of record by applicant are not persuasive of a different

result. It is well settled that third-party registrations are of little weight in determining whether confusion is likely. They are not evidence of the use of the marks therein, and they therefore cannot establish that the consuming public is so familiar with the marks such that words common to them are weak in source-identifying significance. *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993).

The existence of third-party registrations could not be justification for the registration of yet another mark which is likely to cause confusion even if the third-party marks were all similar to each other as well as to applicant's mark. In any event, the third-party registrations made of record by applicant in the case at hand are each distinguishable on a number of grounds. Only one of these marks, "ROYAL COURT," is very similar to the marks in issue in this appeal, but the goods set forth in that registration are different from both the goods identified in the instant application and the registration cited here as a bar under Section 2(d). The issue before us in this appeal is not whether confusion is likely between third-party registered marks or between third-party registered marks and applicant's mark or the registered mark cited as a bar to registration of applicant's mark.

The third-party marks argued by applicant are either different marks or the goods listed in the registrations are different.

As the Examining Attorney points out, the mark applicant seeks to register is a direct translation of the dominant portion of the registered mark cited as a bar by the Examining Attorney, and applicant's mark does not possess any other features or elements that would distinguish it from the registered mark.

The record establishes that the goods with which applicant intends to use its mark are commercially related to those set forth in the cited registration. The third-party registrations made of record by the Examining Attorney listing the goods with which those particular marks are used as both bakery goods and cocoa, coffee, chocolate, frozen confections or candy show that other businesses have registered their marks for these products. This provides a basis upon which to conclude that consumers would interpret the use of similar marks on these goods as an indication that they emanate from a single source. In re Albert Trostel & Sons, Co., 29 USPQ2d 1783 (TTAB 1903).

That the products listed in the cited registration are not an exact match with those specified in the application is not determinative. The issue is not whether the goods

are the same, but rather whether the use of similar marks on them is likely to lead consumers to make the mistaken assumption that they emanate from a single source. Just as this record shows that the marks closely resemble each other, it also shows, through the third-party registrations submitted by the Examining Attorney, that the goods listed in the application are closely related to those set forth in the cited registration.

Applicant, as the newcomer to this field of commerce, had a duty to select a mark that is not likely to cause confusion with a mark already in use in the same field. Moreover, if we had any doubt on this issue, such doubt would necessarily be resolved in favor of the prior user and registrant. *J & J Snack Foods*, 932 F.2d 460, 18 USPQ2d 1889 (Fed. Cir. 1991).

DECISION: The refusal to register under Section 2(d) the Act is affirmed.

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